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Date: January 19, 2010

Name: Deanne Hasler

Signature:

Deanne A. Hasler

PATENT
Our Case No. 10022/325

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Eric A. Portman et al.) Group Art Unit 2617
Serial No.: 10/751,022) Examiner: Aung T. Win
Filed: January 2, 2004) Conf. No. 3692
For: DIRECTORY ASSISTANCE)
WITH MULTI-MODAL MESSAGING)

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
PURSUANT TO 37 C.F.R. § 1.705(d)**

Mail Stop Patent Ext
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

U.S. Patent No. 7,640,006 ("the '006 patent") issued on December 29, 2009. Pursuant to 35 U.S.C. § 154(b), the United States Patent and Trademark Office (PTO) calculated a patent term adjustment of 452 days.

A copy of the Issue Notification for the '006 patent is included herewith as Exhibit A.

Assignee believes that the patent term adjustment should be 877 days. For the reasons stated herein, Assignee respectfully requests reconsideration of this patent

term adjustment pursuant to 37 C.F.R. 1.705(d). Please charge the petition fee pursuant to 37 C.F.R. § 1.18(e) to Deposit Account No. 23-1925. Please charge any additional fee required or credit for any excess fee paid to Deposit Account No. 23-1925.

The PTO calculated the patent term adjustment for the '006 patent based on activities and associated dates detailed in the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History, attached as Exhibit B. Assignee believes that errors and/or omissions in the calculation and/or the PAIR system Patent Term Adjustment History may have resulted in an incorrect patent term adjustment for the '006 patent as described in detail below. Pursuant to 37 C.F.R. §1.705(d), Assignee has filed this request for reconsideration within two months of the issue date of the '006 patent. Note that the '006 patent is not subject to a terminal disclaimer.

In summary, Assignee believes that there was an error or omission in the failure to include a period of adjustment relating to failure to issue a patent within three years of the actual filing date of the application in the amount of 425 days pursuant to 37 C.F.R. § 1.703(b) (see section I below).(This period of time constitutes the "B period" or "B delay" under 35 U.S.C. § 154(b)(1)(B).)

Thus, the patent term adjustment should be increased by 425 days, so that the total adjustment should be 452 days + 425 days = 877 days (see section II below).

I. PERIOD OF ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.703(b)

The period of adjustment pursuant to 37 C.F.R. § 1.703(b) (the "B delay") is the number of days in the period beginning on the day ("the 3 year date") after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a).

As indicated by the PAIR system Patent Term Adjustment History, attached as Exhibit B, the total delay by the U.S. Patent Office was 540 days (This period of time constitutes the "A period" or "A delay" under 35 U.S.C. § 154(b)(1)(A)(i)-(iv)), and the delay by the Assignee was 88 days. Based on those calculations, the PTO calculated the period of adjustment for the present application as 452 days. However, that period of adjustment does not take into consideration the additional adjustment due under the 3-year provision of 37 C.F.R. § 1.702(b) known as the "B delay." See *Wyeth et al. v. Dudas*, 88 USPQ 2d 1538 (D.D.C. 2008) and *Wyeth et al. v. Kappos*, Case No. 07-cv-1492 (Fed. Cir. January 7, 2010) (holding that Section 154(b)'s language is clear, unambiguous, and intolerant of the PTO's suggested 3 year delay interpretation) (Exhibit C).

The present application was filed on January 2, 2004 as evidenced by the official filing receipt attached as Exhibit D. The 3-year date determined pursuant to 37 C.F.R. § 1.703(b) is January 3, 2007. A request for continued examination (RCE) was filed on March 3, 2008, and the '006 patent issued on December 29, 2009. The period beginning on the day after January 3, 2007 (the 3 year date) and ending on the patent issuance date of December 29, 2009 is 1093 days, and the period beginning on the filing of the Request for Continued Examination (RCE) on March 2, 2008 and ending on the patent

issuance date of December 29, 2009 is 668 days. There were no other delays by the PTO during the period between January 3, 2007 (the 3 year date) and the filing of the RCE on March 2, 2008. Thus, pursuant to 37 C.F.R. §1.703(b)(1), the period of adjustment under 37 C.F.R. §1.702(b), which is known as the "B delay" is 1093 days – 668 days = 425 days. Assignee respectfully submits that the non-overlapping period of adjustment beyond the 3 year date is 425 days, under 37 C.F.R. § 1.703(b). Accordingly, Assignee respectfully requests that the PTO correct the patent term adjustment to include the 425 days of non-overlapping adjustment.

II. TOTAL PATENT TERM ADJUSTMENT

For the present application, the total patent term adjustment pursuant to 37 C.F.R. § 1.703(f) is the period of adjustment pursuant to 37 C.F.R. § 1.703 reduced by any delay pursuant to 37 C.F.R. § 1.704. Thus, Assignee submits that the patent term adjustment should be 540 days + 425 days = 877 days, instead of the 540 days indicated on the Issue Notification.

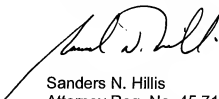
Assignee respectfully asserts that the patent term adjustment determined by the PTO for the '006 patent is incorrect. Accordingly, Assignee respectfully requests the PTO to reconsider, and make revisions to the PAIR system Patent Term Adjustment History in view of the previous remarks. In addition, it is respectfully requested that a certificate of correction be issued by the PTO reflecting the correct Patent Term

Patent No. 7,640,006
Serial No. 10/751,022

Date Issued: December 29, 2009
Date Filed: January 2, 2004

Adjustment for the 006' Patent. Office personnel are invited to contact Assignee via telephone if such communication would be beneficial in fulfilling this request.

Respectfully submitted,



Jan 19, 2010

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